

**CWP No.378 of 2018**

Gurpreet Kaur  
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high court

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.**

**CWP No.378 of 2018**

Date of Decision: 18.01.2018

Harcharan Singh

....Petitioner

Versus

Bhagat Singh and others

....Respondents

***BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY***

Present:- Mr. Karan Singla, Advocate  
for the petitioner.

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**DAYA CHAUDHARY, J.**

The present petition has been filed for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 29.11.2017 (Annexure P-1) passed by the District Magistrate, Patiala, whereby, the petitioner has been ordered to vacate the house of respondent No.1 within a period of two months.

Briefly, the facts of the case as made out in the present petition, are that respondent No.1-Bhagat Singh, who is father of the present petitioner, filed an application under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 for vacation of his house and also for protection of his life and property as well as his wife. It was mentioned in the application that he is having two children i.e one son and one daughter and both are married. Respondent no.1 is stated to be 65 years of age and is a senior citizen. It has also been mentioned that the son as well as his wife reside in his house and he is not being allowed to use the house. Respondent

no.1 and his wife are leading hard and insecure life. Other allegations were also mentioned in the application. Said application was allowed by District Magistrate, Patiala vide order dated 29.11.2017, wherein, it has been held that the petitioner herein in the present petition is in illegal possession of the house and a direction has been issued to vacate the house within a period of two months and to hand over the possession to respondent No.1, namely, Bhagat Singh.

Said order dated 29.11.2017 passed by the District Magistrate, Patiala has been challenged before this Court by filing the present petition.

Learned counsel for the petitioner submits that the petitioner has a right to demand his share in the property, in dispute being the only son of respondent No.1. Learned counsel also submits that the petitioner was earlier working in the grocery shop of his father and is having share in that property also but neither he is being allowed to work nor he is being given share in the residential house. Learned counsel further submits that the petitioner has no other source of income and it is difficult for him to take care of his two minor children and in case, he is ousted from the house, he would not be in a position to have a house on rent. At the end, learned counsel for the petitioner submits that the impugned order dated 29.11.2017 passed by the District Magistrate, Patiala is liable to be set aside.

Facts relating to filing of application under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 by respondent No.1 and thereafter, the direction issued by the District Magistrate, Patiala for vacation of house and handing over possession thereof within a period of two months are not disputed.

Admittedly, the petitioner, his family as well as respondent

No.1 are residing in the same house and the application was filed by respondent No.1 stating therein that is being harassed by his son and he is not being allowed to use his residential house. The District Magistrate, Patiala allowed the application filed by respondent No.1 and directed the petitioner to vacate and hand over the possession of the residential house, in dispute. Said order has been challenged only on the ground that the petitioner has no other source of income and is having two minor children. It has also been mentioned that the petitioner has a right over the property of his father, being the only son.

The “Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as ‘the Act’) was enacted for maintenance and welfare of parents and senior citizens. Chapter II of the Act deals with the maintenance of parents and senior citizens; Chapter III of the Act deals with establishment of old age homes’ Chapter IV deals with the provisions for medical care of senior citizen.

Section 2 contains the definitions and clause (f) defines ‘property’ as under :-

**Definitions:-** In this Act, unless the context otherwise requires:-

a) xx xx xx

b) xx xx xx

c) xx xx xx

d) xx xx xx

e) xx xx xx

“(f) **Property**” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in

such property.”

The aforesaid definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read along with Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under :-

***“22. Authorities who may be specified for implementing the provisions of this Act***

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act reads as under :-

**“27. *Jurisdiction of civil courts barred***

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.”

Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of Section 32 of the said Act.

The State Government has framed “The Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012” (hereinafter called as ‘the Rules’. Rules 22 and 23 are relevant and reproduced as under :-

**“22. *Duties and power of the District Magistrate.*- (1)**

District Magistrate or any other officer authorised by him in this behalf within the local limits of his jurisdiction shall perform the duties and exercise the powers mentioned in sub rules (2) and (3), so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to -

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with a sense of security and dignity;

xx xx xx

(3) With a view to performing the duties mentioned in

sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with these rules, the Act and general guidelines of the State Government, as may be necessary, to any Government and statutory agency or body working in the district and especially to the following :-

- (a) Officers of the State Government in the Police Department, Health and Family Welfare Department, Information and Public Relations Department and the departments dealing with the welfare of senior citizens;
- (b) Maintenance Tribunal and the conciliation officers;
- (c) Panchayats and Municipalities; and
- (d) Educational Institutions.

xx xx xx

(5) In case of any danger to the life or the property of a senior citizens, it shall be the duty of the District Magistrate or the officer authorised by him to protect the senior citizen from the said danger.

xx xx xx

**23. Action plan for the protection of life and property of senior citizens.** - An action plan, for protection of life and property of senior citizens shall be notified by the State Government within a period of six months from the date of publication of these rules in the Official Gazette and it may be revised from time to time.”

In terms of Rule 23 of the Rules, the State Government has published Action Plan on 27.11.2014, the relevant extract from which reads as under :-

“1. Procedure for eviction from property/residential building of Senior Citizens/parent:

(i) xx xx xx

(iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizens/parents are in unauthorized occupation of any property as defined in

the Maintenance and Welfare of parents and Senior Citizens Act, 2007, and that they should be evicted, the District Magistrate shall issue in the manner hereinafter provided notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

**2. Eviction Order from property/residential building of Senior Citizens/Parents:**

(i) If, after considering the cause, if any, shown by any persons in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other office duly authorised may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;

(ii) The District Magistrate may also associate NGOs/Voluntary organisations/social workers working for the welfare of senior citizens for the enforcement of order.”

As per Section 22 falling in Chapter V of the Act, the State Government is to prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 32(2)(f) also empowers the State Government to frame Rules in respect of comprehensive action plan for providing protection of life and property of senior citizens. In terms of such provisions, the Rules have been framed

which causes a duty on the District Magistrate to ensure that the life and property of senior citizens are protected and they are able to live with a sense of security and dignity. Apart from framing such Rules, the Action Plan for protection of life and property of the senior citizens has been published which inter alia provides for eviction of unauthorized occupants as reproduced above.

The petitioner, herein, is residing in the house of respondent No.1 on the basis of concession given by his father in the property owned by him. He, as a licensee, is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any type to remain in possession of the property of respondent No.1. Admittedly, respondent No.1 is owner of the property, in dispute. Respondent no.1 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who interferes in the possession of the property of the senior citizen. The protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure ensures for the benefit of the senior citizen. The petitioner has no right to resist his eviction only on the ground that he is the only son or he does not have any source of income. The eviction is one part of the right to protect

the property of a senior citizen and this right can be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.

The Division Bench of this Court in ***Justice Shanti Sarup Dewan, Chief Justice (Retired) and another vs Union Territory, Chandigarh and others 2014(5) RCR (Civil) 656*** has discussed the scope of Article 226 of the Constitution of India and directions were issued to the Administration of Union Territory, Chandigarh to take steps to bring into force proper rules under Section 32(1) of the Act and also the directions were issued to Senior Superintendent of Police, Union Territory, Chandigarh to ensure enforcement of the direction to vacate the house, in dispute, to the extent that it is occupied and to hand over the keys within a period of 15 days from the date of passing of the order.

In the present case, admittedly, the house is owned by respondent No.1, who is senior citizen and the portion of that house has been occupied by his son, who is the petitioner in the present case. He has been directed to vacate the house on the basis of directions issued by District Magistrate, Patiala on the complaint made by respondent No.1. The findings recorded by District Magistrate, Patiala are reproduced as under :-

*“ In present case, petitioner is the owner of property. Petitioner has not only got the legal right to the house but petitioner is also in need of the house. Respondent has given full opportunity to put his defence. But they did not produce and answer as proof in their favour and Respondent No.1 has asked in the court for his required share and said tat he is ready to vacate the house. It is cleared that Respondent is in illegal possession of the house. Hence, respondent is directed to vacate the house of the petitioner House*

No.83/2 Near Shanti Dev Mandir, Tobha Kashmiriyan  
within 2 months and to give possession to the  
petitioner. Copy of the order should be sent to the  
Tehsildar (C.R.O), Patiala for compliance of the order  
as well as for necessary action. File is sent and  
consigned to the record room.”

In view of the findings recorded by District Magistrate, Patiala  
and also in view of provisions of the Act and Rules, I find no reason to  
interfere in the impugned order and as such, the present petition, being  
devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)  
JUDGE

18.01.2018  
gurpreet

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |